Supreme Court of the United States.

Nos. 149 and 466.—October Term, 1904.

Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee, and Charles D. Barry, Trading as Copartners under the Firm Name and Style of Henry W. Peabody & Co., Plaintiffs in Error, *vs.* The United States.	In error to the District Court of the United States for the Southern District of New York.
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Warner, Barnes and Company, Limited, Appellant, *vs.* The United States.	Appeal from the Court of Claims.
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[May 28, 1906.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

These are suits to recover duties exacted from plaintiffs in error and appellants upon merchandise shipped by them from New York to Manila, and landed at the latter port between April 11, 1899, the date when the ratifications of the treaty with Spain were exchanged and the treaty proclaimed, and October 25, 1901. The duties were levied under an order of the President, dated July 12, 1898. The cases were argued in this court March 3, 1905, and the judgments reversed April 3, 1905. 197 U. S. 429.

We ruled that the order of July 12, 1898, was a regulation for and during the then existing war with Spain, referred to as definitely as if it had been named, and that the right to levy duties thereunder on goods brought from the United States ceased on the exchange of ratifications. *Dooley* v. *United States*, 182 U. S. 222.

And that after title passed, April 11, 1899, there was nothing in the Philippine insurrection of sufficient gravity to give to the islands the character of foreign countries within the meaning of a tariff act. *Fourteen Diamond Rings*, 183 U. S. 176. As to the subsidiary point that whether the exaction of the duties was lawful or not, it had been ratified by the act of July 1, 1902, 32 Stat. 691, 692, c. 1369, § 2, we were of opinion that the ratification of "the actions of the authorities taken in accordance with the provisions of said order and subsequent amendments" was confined to actions which were taken in accordance with the provisions of the

order and amendments, which these exactions were not. May 29, 1905, we allowed petitions for rehearing to be filed addressed solely to the matter of ratification, and subsequently (November 13) a rehearing was granted "as to the question whether Congress ratified the collection of the sums sought to be recovered in these suits."

The cases were reargued January 18 and 19 on that question.

That the moneys exacted from plaintiffs in error and appellants were illegally exacted is not open to question under our order, unless the act of July 1, 1902, operated to the contrary. The second section of that act reads as follows: "That the action of the President of the United States heretofore taken by virtue of the authority vested in him as Commander-in-Chief of the Army and Navy, as set forth in his order of July twelfth, eighteen hundred and ninety-eight, whereby a tariff of duties and taxes as set forth by said order was to be levied and collected at all ports and places in the Philippine Islands upon passing into the occupation and possession of the forces of the United States, together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed, and the actions of the authorities of the government of the Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments, are hereby approved."

The order of July 12, 1898, by President McKinley, as Commander-in-Chief, directed that upon occupation of any ports or places in the Philippine Islands by the forces of the United States an accompanying tariff of duties and taxes should be levied and collected as a military contribution, and that regulations for its administration should take effect and be in force in the ports and places occupied. Manila was captured August 13, and the next day the custom house was opened and taxes were collected according to the prior Spanish tariff up to November 10, 1898, until which date the order of July 12 had been suspended.

On the rehearing an order of the Military Governor of the Philippines of October 26, 1898, which embodied the full text of the customs tariff and regulations, was brought forward, and was in all essential respects a repetition of the order of July 12.

The Porto Rican cases were decided May 27, 1901, and in June the Secretary of War cabled the commission at Manila that: "The most obvious distinction between the status of Porto Rico and the Philippines, after the cession, indicated in the opinions of the court, is in the fact that Porto Rico was at the time of cession in full peaceable possession, while a state of war has continued in the Philippines. As the question of the President's power to impose duties in the Philippine Islands under the existing conditions of military occupation has not been decided by the court, the President has determined to continue to impose duties as heretofore."

Undoubtedly the order of July 12, 1898, contemplated vessels from America as well as others, yet that order, having been made in time of war, for a military contribution, when the Philippines did not belong to us, must be taken to have contemplated them, as it contemplated those from other countries, as vessels foreign to the country, and to have imposed the tax upon them *qua* foreign. The military tax was, so to speak, a seizure of Spanish revenues. That was what the order meant when it was passed, and a change of circumstances did not change its meaning. Neither was the meaning changed by any amendment. The ground on which it was kept in force by the Secretary of War, June 8, 1901, was that the Philippines were still in a state of war. If that view had been correct the order would have applied and would have had lawful effect, but it turned out not to be correct.

The ratification may be assumed to apply to the order as actually made, and not to have been limited to such an order or so much of this order as the President had a right to make. But it does not construe the order, and as it confines the ratification to actions in accordance with the order and amendments, the question what actions were in accordance with them is for us. The statute does not ratify all actions or all collections of taxes, as it easily might have done, but only actions in accordance with the order. If the order properly construed did not purport to apply to vessels unless they were either enemy or foreign, then when a vessel ceased to be foreign the order did not apply, and a tax upon such a vessel not being in accordance with the order is not ratified by the act. This construction is favored by the consideration that the suits had been begun when the act of July 1, 1902, was passed, and that, even if Congress could deprive plaintiffs of their vested rights in process of being asserted, *Hamilton* v. *Dillin*, 21 Wall. 73, still it is not to be presumed to do so on language which, literally taken, has a narrower sense.

Morever, the act of July, 1902, was passed with full knowledge and after careful consideration of the decisions of this court, and Congress was aware that grave doubt, at least, had been thrown upon its power to ratify a tax under circumstances like the present. *De Lima* v. *Bidwell*, 182 U. S. 1, 199, 200. This affords a special reason for believing that if it had intended to encounter the limitations of that case it would have done so in clear words from which there was no escape.

It should also be remembered that there was a powerful opposition in Congress and that the phraseology of the act probably represents all that it was deemed safe to ask. Every consideration requires that the ambiguous language of the act should not be stretched beyond the exact and literal meaning of the words. In a literal sense they ratify only actions in accordance with the order construed as it would have been construed by this court had it come before us upon the day when it was made.

It is not a sufficient answer to say that the ratification was meaningless unless it embraced duties collected on imports from the United States after April 11, 1899, because the exactions before were legal. The instances are many where Congress out of abundant caution has ratified what did not need, or was afterwards found not to have needed, ratification. *Cross* v. *Harrison*, 16 How. 164; *Prize Cases*, 2 Black, 635.

It would be inadmissible to lay down as a general rule that a particular ratification covered what was not, in the judgment of the courts, included or intended to be, simply because it might be thought to have been otherwise unnecessary.

In these cases, however, the ratification act was not otherwise meaningless. Duties were collected under the order of July 12, 1898, as a military contribution while the war with Spain was in progress. The treaty was signed December 10, 1898, and the President on December 21 issued an order proclaiming the sovereignty of the United States in the islands and directing duties and taxes to be collected in future as public revenues for the support of the government. When the treaty was ratified the applicable laws of the United States became operative, but the President, nevertheless, continued in force the tariff created by the order of July 12, 1898, and by an order of April 21, 1899, established a collection district with Manila as the chief port of entry, and under these orders collections of duties were made. This involves the question whether after April 11, 1899, the President could have enforced any tariff other than such as existed under acts of Congress or might be sanctioned by Congress. And that question was put at rest by this ratification.

Much more might be said, but we think it would needlessly prolong this opinion.

Notwithstanding the able argument of the Attorney General, we adhere to the conclusion previously announced.

Judgments reversed.

True copy.

Test:

Clerk Supreme Court, U. S.

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[May 28, 1906.]

Mr. Justice White, with whom concurs Mr. Justice McKenna, dissenting:

Although I dissented in *De Lima* v. *Bidwell*, (182 U. S. 1,) *Dooley* v. *United States*, (182 U. S. 222,) and *Fourteen Diamond Rings*, (183 U. S. 176,) nevertheless I agreed to the judgment of reversal as previously rendered in this case. (197 U. S. 429.) I was constrained so to do because to me it seemed that the determination of the substantial issues in the case were foreclosed by the prior cases above mentioned, which were binding on me under the rule of *stare decisis*. It is true that in this case, as previously argued and decided, there was present the question of an alleged ratification by Congress of the imposition and collection of the taxes in controversy; but, on the former argument, my attention was not directed to public reports and documents throwing light upon the scope of the ratifying act, as was done on the present argument. Construing the act of Congress which is relied upon to establish the ratification, by the light of the public documents referred to, my mind sees no possible escape from the conclusion that that act was intended to and did ratify the collection of the charges complained of. Having no doubt of the power of Congress to ratify, to my mind it clearly results that I erred in giving my assent to the previous judgment of reversal, and I therefore dissent from the opinion and conclusion of the court now announced.

I am authorized to say that Mr. Justice McKenna concurs in this dissent.